Supreme Court, U.S.
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No. 00-64

IN THE

Supreme Court of the United States

STATE OF MARYLAND,

Petitioner,

v.

TROY WILLIAM REYNOLDS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF SPECIAL APPEALS OF MARYLAND

RESPONDENT'S BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

The Respondent, Troy William Reynolds, was convicted of possession of a controlled substance in the Circuit Court for Anne Arundel County, Maryland. The charges arose out of an encounter between the Respondent and state law enforcement officers on a street corner. As set forth in the opinion of the Maryland Court of Special Appeals, the circumstances of the encounter were as follows:

At about 3:30 p.m., Detective Thomas Coleman and Officer McNamara saw a group of about 10 persons on a street corner. As the officers approached, the group began to disperse, including the Respondent, who walked away at a normal pace. (App. 4a.) The officers stopped the vehicle they were in, exited it, and approached the Respondent. (App. 4a.) Although Coleman admitted he had no reason to suspect the Respondent of involvement in any criminal activity or posing any threat (App. 9a-10a), the officers asked the Respondent to tell them his name and birth date, to which the Respondent replied truthfully. (App. 4a.) Coleman also asked the Respondent what he was doing in the area. (App. 9a.) Although what occurred next is in dispute, Coleman testified that the officers then ran a check on the Respondent (App. 4a), and told the Respondent to wait while they completed that check. (App. 45a.) Between 5 and 10 minutes later, the officers received a response indicating the Respondent was wanted on an outstanding arrest warrant. (App. 11a-12a.) He was then arrested, and a search incident to that arrest led to the discovery of the evidence which was the basis of the controlled substances charges.

REASON FOR DENYING THE WRIT

THE RESPONDENT WAS ILLEGALLY SEIZED BY THE OFFICERS BECAUSE A REASONABLE PERSON WOULD NOT HAVE FELT FREE TO LEAVE THE SCENE, AND THAT SEIZURE WAS NOT SUPPORTED BY SUFFICIENT CAUSE.

The State's petition presents no cogent reason for this Court to review and overrule the Maryland Court of Special Appeals' exhaustive and well-reasoned decision in this case. That decision is wholly consistent with this Court's precedent delineating the circumstances under which a person will be considered to have been "seized" for the purpose of the Fourth Amendment. The court below stated the governing test as whether, under the circumstances, a reasonable person would have felt free to end the encounter and to leave at any point in time from the initial accosting to the time of his or her arrest. (App. 34a.) This is precisely the test required by this Court's rulings. *United States v. Mendenhall*, 446 U.S. 544, 554 (1980) (opinion of Stewart, J.).

Furthermore, the Court of Special Appeals properly applied that precedent to the controlling facts of the case. Although the version of the facts adopted by the Court of Special Appeals did not include a finding that the Respondent was physically grabbed or controlled by the officers who accosted him, a fact which was subject to conflicting testimony in the trial court, such a physical employment of force is not required for a seizure of a person to be effected. *California v. Hodari D.*, 499 U.S. 621, 625-26 (1991). When an officer "by means of physical force *or show of authority*, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968). Just as the activation of a police vehicle's overhead lights and siren constitutes a seizure of the targeted driver of a vehicle by signaling that he must pull to the side of the road and stop, *cf. Michigan v. Chesternut*, 486 U.S. 567, 575 (1988), so will other shows of

authority by police be considered a seizure when they coerce a person to stop. This Court has said that "the crucial test is whether, taking into account all of the circumstances surrounding the encounter, the police conduct 'would have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.' " *Florida v. Bostick*, 501 U.S. 429, 437 (1991) (quoting *Chesternut*, 486 U.S. at 569)).

Applying these very standards and principles, the Court of Special Appeals determined that the Respondent had been seized when he was accosted on the street by the two officers, required to identify himself, and required to wait at the scene for at least five minutes until a check for outstanding warrants was completed. The Court of Special Appeals stressed the fact that after requesting the Respondent's identity and date of birth, the officers indicated to him that they had not concluded their inquiry and that he was required to remain on the scene until the warrant check came back. (App. 35a-36a.) The court wrote as follows:

> The inquisitorial nature of the accosting itself, while not the equivalent in its coercive impact to a prior seizure, certainly has the effect of disarming the average person. The act of alighting from a marked police vehicle and, significantly, singling out [Respondent] as he departed from the location where he had congregated with eight or nine companions are circumstances which patently would be coercive to a reasonable person. (App. 37a.)

When combined with the fact that the police had no apparent reason for accosting the Respondent, there was a coercive show of authority which rose to the level of a seizure.

The Court of Special Appeals also made the convincing observation that "a 'prolonged' encounter during which there is no meaningful interaction between the citizen and police is

more indicative of an involuntary rather than voluntary encounter." (App. 33a.) It pointed out that after the Respondent was accosted by the officers and asked to identify himself, a transaction which could not have exceeded a minute, the Respondent was then obliged to wait at least another five minutes while the warrant check was run. "A reasonable person, having initially walked away when the police arrived, would not *voluntarily* stand idly by for five minutes awaiting the results of the warrant check," the court wrote. (App. 38a.)

Given all the circumstances, the Court of Special Appeals was plainly warranted in concluding that the Respondent was seized during his encounter with the officers which led to the discovery of the evidence used against him at his state court trial. The State's petition attempts to undermine the conclusion below by pointing to certain factors indicative of a seizure, such as the fact that no documents of the Respondent were kept by the officers, which did not exist in this case. But even a single factor, such as a show of force by the pointing of a gun, can be sufficient to indicate a show of authority sufficient to communicate to a reasonable person that he was not free to leave. As this Court wrote in *Chesternut*, 486 U.S. at 573:

> The test is necessarily imprecise, because it is designed to assess the coercive effect of police conduct, taken as a whole, rather than to focus on particular details of that conduct in isolation. Moreover, what constitutes a restraint on liberty prompting a person to conclude that he is not free to "leave" will vary, not only with the particular police conduct at issue, but also with the setting in which the conduct occurred.

The Court of Special Appeals considered all the relevant factors in concluding that the Respondent was seized by the officers, and while the State may take issue with that conclusion (which was implicitly affirmed by the Maryland Court of Appeals), it has not shown any conflict between that conclusion and the precedent of this Court.

Indeed, the State has not shown that this case falls within this Court's guidelines for granting petitions for certiorari. While the petition cites several cases which involve facts bearing a surface similarity to those of the instant case, the key point is that none of those cases involves the facts identical to the instant case. The determination of whether a seizure occurred is highly fact-specific, and results necessarily vary depending upon those facts. *Id.* Furthermore, the Court of Special Appeals decided this case using this Court's precedent and evaluating the totality of the circumstances and so has not decided this case "in a way that conflicts with the decision of another" state or federal court. Sup. Ct. R. 10(b). The State also attempts to define this case as one involving a novel issue because so-called "community policing" is involved. But this case simply involves the application of settled Fourth Amendment principles to particular facts; no new issue of federal law was decided by the Court of Special Appeals requiring the attention of this Court. Sup. Ct. R. 10(c). The Court of Special Appeals' decision is neither novel nor a break from precedent and should not be disturbed.

CONCLUSION

For the reasons set forth above, the Respondent respectfully requests that the Petition for Certiorari filed by the State of Maryland in this case be denied.

Respectfully submitted,

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